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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,763	05/20/2002	Dianne Beverley Croteau	10748-006	3008

1059 7590 02/24/2005

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EXAMINER
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NELSON JR, MILTON

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/926,763

Applicant(s)

CROTEAU ET AL

Examiner

Milton Nelson, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Applicant's amendment of 12/10/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5, 6, 8-16, 18, 19, 21-26 and 39-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 8-16, 18, 19, 21-26 and 39-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 39-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 3 of claim 39, it appears that Applicant is positively claiming the floor in combination with the chair. Note the recitation "a seat supported by the frame a distance above the floor". This is inconsistent with line 2 of the claim, wherein the chair is set forth simply "to rest on a floor". Clarification in the claim language is required. Claim 42 fails to further limit claim 39, from which it depends. As such, claim 42 is redundant. Claims 40, 41, and 43-45 are indefinite since each depends from an indefinite claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 6, 8/1, 8/3 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu (5575534) in view of Maier (4951334). The primary reference shows all claimed features of the instant invention with the exception of the front-to-back extent of the second support surface being approximately equal to the front-to-back extent of the first support surface. Note Figure 13 of Yu. In Yu, note the first support surface (211), second support surface (212), angle ranging from about 10 degrees to about 30 degrees (see column 9, lines 12-13), and common edge (see Figure 13) that is "about" 12 cm radius.

The secondary reference teaches configuring a seating assembly with a front-to-back extent of a second support surface (32) being approximately equal to the front-to-back extent of the first support surface (16). Note Figures 2 and 3. Also note the last paragraph in column 4.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by configuring the front-to-back extent of the second support surface as approximately equal to the front-to-back extent of the first support surface in order to enhance user support and comfort.

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Claims 14-16, 18, 19, and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu (5575534) in view of Maier (4951334). The primary reference shows all claimed features of the instant invention with the exception of the front-to-back extent of the second support surface being approximately equal to the front-to-back extent of the first support surface. Note Figure 13 of Yu. In Yu, note the first support surface (211), second support surface (212), angle ranging from about 10 degrees to about 30 degrees (see column 9, lines 12-13), and common edge (see Figure 13) that is "about" 12 cm radius.

The secondary reference teaches configuring a seating assembly with a front-to-back extent of a second support surface (32) being approximately equal to the front-to-back extent of the first support surface (16). Note Figures 2 and 3. Also note the last paragraph in column 4.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by configuring the front-to-back extent of the second support surface as approximately equal to the front-to-back extent of the first support surface in order to enhance user support and comfort.

Claims 39-45, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu (5575534) in view of Maier (4951334). The primary reference shows all claimed features of the instant invention with the exception of the front-to-back extent of the second support surface

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being approximately equal to the front-to-back extent of the first support surface. Note Figure 13 of Yu. In Yu, note the frame (400), first support surface (211), second support surface (212), and common edge (see Figure 13).

The secondary reference teaches configuring a seating assembly with a front-to-back extent of a second support surface (32) being approximately equal to the front-to-back extent of the first support surface (16). Note Figures 2 and 3. Also note the last paragraph in column 4.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by configuring the front-to-back extent of the second support surface as approximately equal to the front-to-back extent of the first support surface in order to enhance user support and comfort.

Claims 13/1 and 13/3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu (5575534) in view of Maier (4951334), as applied to claims 1-3 above, and further in view of Congleton (4552404). The primary reference, as modified above, shows all claimed features of the instant invention with the exception of the pommel extending upwardly from at least one of the support surfaces. Note the discussion of Yu, above.

The secondary reference conventionally teaches configuring a seating assembly with a pommel (34) extending upwardly from at least one support surface of the assembly.

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It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by adding a pommel extending upwardly from at least one support surface of the assembly. Such conventionally provides a means for enhancing user restraint and support.

Claims 26/14 and 26/16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu (5575534) in view of Maier (4951334), as applied to claims 14-16 above, and further in view of Congleton (4552404). The primary reference, as modified above, shows all claimed features of the instant invention with the exception of the pommel extending upwardly from at least one of the support surfaces. Note the discussion of Yu, above.

The secondary reference conventionally teaches configuring a seating assembly with a pommel (34) extending upwardly from at least one support surface of the assembly.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by adding a pommel extending upwardly from at least one support surface of the assembly. Such conventionally provides a means for enhancing user restraint and support.

***Response to Arguments/Amendment***

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Applicant's response has been fully considered. Arguments provided therein are now moot in view of the new grounds of rejection. Newly discovered prior art has necessitated withdrawal of the previous indication of allowable subject matter. Rejections based on the newly cited prior art have been provided.

### ***Conclusion***

This office action has not been made final since it includes a new grounds of rejection not necessitated by Applicant's amendment.

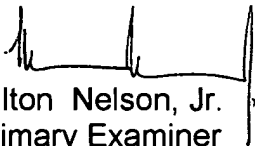
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton Nelson, Jr. whose telephone number is 7033082117. The examiner can normally be reached on Monday-Wednesday 5:30-3:00, and alternate Fridays 5:30-3:00.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Milton Nelson, Jr.  
Primary Examiner  
Art Unit 3636

mn  
February 21, 2005